Home Office

Modernising Police Powers

Review of the Police and Criminal Evidence Act (PACE) 1984

Consultation Paper

Home Office March 2007

Contents

Foreword

The police service is the gateway to the Criminal Justice System (CJS) and the main visible point of contact to the public in tackling crime and disorder. The police service is the starting point for the investigation and evidence gathering process and works closely with the Crown Prosecution Service and other agencies in determining how best to achieve the most successful outcome to investigations.

What has struck me most vividly about this crucial stage of the CJS process are the procedural formalities that officers have to complete and fulfil often even before the investigation can get underway. Some of these are essential and the bedrock for the safeguards the system provides to the individual.

We are rightly proud of the safeguards and protections afforded to the individual when they encounter the criminal justice system. These are essential in a democratic and mature society which protects the individual from arbitrary interference.

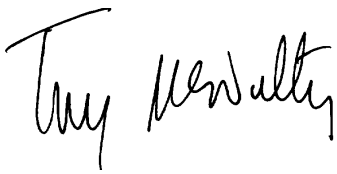
However, there are bureaucratic processes and over-complicated procedures in the application of these safeguards which do not serve the best interests of the police, or the criminal justice system or, importantly, those of the victim.

My aim is to re-focus the investigation and evidence gathering processes on serving the needs of victims and witnesses and helping raise the efficiency and effectiveness of the police service in delivering the drive of the Police Reform programme to have 21st century policing powers to meet the demands of 21st century crime.

That is why I am announcing this Review of police powers and procedures.

The Review will build on the extensive work carried out since the joint Home Office and Cabinet Office Review of PACE in 2002 and will scope the potential for further rationalisation of police powers. This document suggests how the Review can be taken forward. Importantly, it provides a significant opportunity for you to help drive change both at the strategic and operational level of policing.

Your views are positively welcomed.



Tony McNulty MP
Minister of State for Crime Reduction, Policing, Community Safety and Counter Terrorism

Introduction

In his Foreword, Tony McNulty referred to the 2002 Review of PACE and the amount of work undertaken since then in response to the Review's findings.

As the Minister has said, our aim now is to build on that work and move the reform and rationalisation programme on to the next stage. This will involve examining how best PACE and the PACE Codes of Practice serve the demands of a modern police service tasked with tackling so-called low level anti-social behaviour through to highly sophisticated and organised crime.

The introduction of PACE provided what, by any standard, has proved a fundamental change for the better in the way in which a key part of the criminal justice system is operated. It provides a core framework of powers and safeguards around arrest, detention, investigation, identification and interviewing of suspects.

But we need to keep PACE powers and procedures under close review to ensure that they fully reflect what is needed in a fast changing world, and that every opportunity is taken to simplify and rationalise wherever possible. For example, changes made to PACE in the Serious Organised Crime and Police Act 2005 simplified the complicated myriad of arrest powers into a single power of arrest; it also introduced the ability to apply for multiple entry and all premises warrants on a single application. Both represent changes which have cut through the processes and complexities and provide clear focus on reducing police and court bureaucracy and speeding up the investigative process.

This public consultation exercise is aimed at asking those who use and work with PACE and the PACE Codes for their ideas for change, what change would look like and what barriers there are to success. The Review is not just about searching out areas with the potential for sweeping, radical change. It is about day-to-day operational improvements.

Some of you will be familiar with the *Register of Changes to the PACE Codes* on the Home Office website. That promotes suggestions on change at its most detailed level. We are looking for you to tell us and to discuss with us how we can achieve both strategic and operational change.

We are acutely aware that change is sometimes perceived to be the only constant factor. Even when that change improves existing practices, it often comes with consequential considerations such as training, implementation and familiarisation. Part of the Review process will be to factor in the training and implementation implications in terms of benefits, capacity and resources for all agencies involved.

Our key aim is to maintain the framework approach to police powers. In doing so, we will look to provide greater clarity for partners, stakeholders and the public on the exercise of those powers; improve police efficiency and effectiveness; and focus on best serving the needs of the victim and the interests of the criminal justice system.

Vic Hogg
Director
Policing Policy and Operations Directorate
Home Office

How to respond

The paper is available on the PACE and PACE Codes webpage and a link email address is provided there to respond.

Alternatively, you may wish to respond to the PACE Review by clicking on this link if you are reading the document electronically or e-mailing your response to pacereview@homeoffice.gsi.gov.uk.

A template for proposals is provided at Annex A. This may provide useful support in considering what your suggestion would deliver but we also welcome comments in text format.

If you wish to respond by post, you should address your comments to:

Alan Brown
Home Office
Police Leadership and Powers Unit
4th Floor Peel
2 Marsham Street
London
SW1P 4DF

Responses to the Paper should be submitted by 31 May 2007.

You may find the following links useful:

PACE and PACE Codes
http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/

PACE Codes Register of Changes
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Register_of_All_Changes_04_06

PACE Review 2002
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/pacereview2002.pdf

Guidance on the Safer Detention & Handling of Persons in Police Custody
http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/safer_detention/?version=1

Safer Detention Guidance Register of Changes
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/SD_Register_of_Changes1.pdf

Chapter 1:

Criteria for change

1.1 The salient elements which should be considered in determining whether or not a proposed change will have beneficial impact are set out aside. The list is not exhaustive but we would look for respondents to consider whether one or more of the criteria are met.

1.2 A template is provided at Annex A incorporating the criteria. You can use the template or provide comments in the normal way.

1.3 Please do not feel restrained from submitting ideas and suggestions if you are unsure of the potential impact. If required, we will contact respondents direct to talk through or obtain clarification on what is proposed.

1.4 At the same time, we recognise that you may have identified a process or procedure which is either a barrier to success or which has features which inhibit success or cause undue or unnecessary use of capacity and resources. You may not have a solution but we very much welcome you raising such issues as part of the consultation.

1.5 The criteria that should be applied are:

Improving police efficiency and effectiveness through:

- promoting strategic change for both police and the way in which the police interact with the Criminal Justice System;
- reducing bureaucracy;
- removing duplication and replication;
- identifying workforce modernisation opportunities;
- freeing up officers' time for operational activity on the street; and
- improving communication and raising community confidence.

Maintaining safeguards and enhancing accountability by:

- raising public understanding and awareness;
- ensuring powers are proportionate;
- encompassing technology to improve recording and monitoring processes;
- raising levels of reporting and accountability; and
- protecting the balance between the rights of the individual and the needs of the criminal justice system.

Increasing Usability and Accessibility by:

- simplifying legislation and guidance;
- providing consistency of approach on procedures and processes;
- customising publications/materials for target groups; and
- engaging and empowering stakeholders, practitioners and training providers at development and implementation stages.

Chapter 2:

Reviewing PACE and the PACE Codes

2.1 There have been a series of changes to PACE in response to the 2002 Review of the Act. These changes have focused on achieving the following outcomes:

- providing police and other relevant agencies with appropriate and proportionate powers to tackle crime;
- removing barriers enabling more effective targeting of criminals;
- removing unnecessary bureaucracy
- freeing up more time for police officers to take up operational duties outside the confines of the police station;
- removing areas of complexity and providing clearer, more accessible powers for both practitioners and public; and
- promoting the needs of victims and witnesses.

2.2 However, the nature of the 2002 Review meant that implementation of its recommendations focused on particular areas of the 1984 Act rather than undertaking a fundamental review of the legislation itself. Since PACE was introduced, there has been a plethora of changes and related legislation which has impacted on PACE. Consequently, PACE and the Codes have become unduly complex and cumbersome.

2.3 There is a need to consider how we can use the benefit of these changes whilst ensuring that PACE continues to provide the framework approach setting out police powers to investigate crime and the safeguards and protections for the public.

2.4 Using the outcomes listed in paragraph 1.5 above, we intend to examine how best that can be achieved. A potential option is the codification (the process of collecting and restating the law) of PACE. However, in our view, the opportunity should be taken to consider the benefits of a complete and fundamental review.

2.5 The Review should examine how we use primary and secondary legislation, in this case the Act itself and the PACE Codes of Practice. The PACE Codes continue to grow in size and complexity at a significant rate. Whatever the reason for that, the fact is that there are elements of replication, duplication and straightforward bureaucracy. The format and content of the Codes is very much written in a formal, legalistic style. This is understandable given their legal status but the potential exists to rationalise the style, format and presentation of the Codes so that they better meet the operational needs of the police, wider stakeholders and the public.

2.6 An independent review of the design and format of the Codes is already underway. The findings of the review will be published on the PACE Codes webpage in Spring 2007 but initial indications from that review are that the format and presentation of the Codes are considered outdated and too complex. Consideration should be given to the potential for statutory guidance to replace the Codes. This would provide greater flexibility to update and review and the opportunity to consider the language and format used to best suit the needs of practitioners and users.

2.7 A useful example is the *Safer Detention Guidance* published by the National Centre for Policing Excellence on 8 February 2006 on behalf of the Home Office and the Association of Chief Police Officers (ACPO). That provides definitive guidance to the police on custody and custodial care matters and by its very nature, reflects much of the content of PACE Code C. The major difference is that it not only sets out what has to be done but, importantly, how it can be achieved.

2.8 PACE is about the exercise of proportionate powers and maintaining the balance between the rights of the individual from arbitrary interference and the ability of the police to investigate crime. We are not looking to

dilute safeguards. Instead we are looking to examine the ways in which these safeguards are delivered and the processes which support their application.

2.9 Importantly, the oversight and scrutiny of the exercise of PACE powers derives largely from when PACE was enacted, and from the introduction of the Codes in 1986 and major change in 1995 following the Report of the Royal Commission on Criminal Procedure (Runciman 1993, CM2263). The Review should examine whether the levels of scrutiny and accountability are applicable for this century, particularly in the light of technological advances, inspectorate processes and community oversight.

2.10 The PACE Codes have always applied to any persons who are charged with the duty of investigating offences or charging offenders. Since the introduction of PACE that landscape has changed significantly. For example, the Police Reform Act 2002 has enabled chief police officers to designate civilian staff with powers previously exercised exclusively by police officers. The Review should examine the scope for introducing an enforcement framework applicable to police, police staff and other agencies.

Next Steps

2.11 This public consultation exercise is aimed at asking those who use and work with PACE and the PACE Codes for their ideas for change, what change would look like and what barriers there are to success.

2.12 We will examine responses in consultation with departmental colleagues and police representatives, including the National Custody Forum and the regional custody network, the National Identification Forum and the Skills and Knowledge Forum. We will also look to see how best to engage with the National Policing Improvement Agency.

2.13 Overseeing all this activity lies with the range of stakeholders and practitioners who use PACE on a regular and frequent basis. Whilst we do not wish to have an overly bureaucratic process, we do envisage the establishment of a PACE Review Board.

2.14 Membership of the PACE Review Board would consist of representatives from the Judiciary and organisations such as the Bar Council and the Law Society; policing representatives; academics; training providers; representatives from the voluntary and community sector; and representatives from government departments. The Board would be chaired independently of Government.

2.15 The response to the consultation paper will help determine the exact scope and nature of the Board's work. The consultation process will be in addition to the normal course of bilateral engagement with individual stakeholders and other government departments. The outcome of these contacts will determine how we move forward with the Review process.

Chapter 3:
Suggested areas for consideration

On the street

PACE Part 1, Code A & Street Disposals

3.1 We should look to provide processes for dealing with the person on the street which minimises both the processes and procedures which an officer needs to complete and the level of contact and inconvenience for the individual.

3.2 Recent changes to PACE around street bail, providing a single power of arrest and piloting of electronic stop and search records all focus on improving the use and effectiveness of police time.

3.3 At the same time, we need to consider measures which can reduce the need to take a person into custody but provide the police officer with sufficient confidence that the person has been rightly identified and satisfied that they will comply with the next stages of the process whether that is attending the police station, attending court or paying a fixed penalty notice.

3.4 We also have to consider how we can raise the individual's understanding of what their rights are, how they can be exercised and what to do if they are not satisfied.

3.5 Suggested approaches must provide a balance between these two distinct but not mutually exclusive interests in order to raise public access and understanding.

3.6 The police have a range of powers on the street. We would welcome proposals about if, and how, these should be rationalised or whether there is a gap which requires some new approach. This includes any need to strengthen enforcement powers in the event of breaches.

Entry, search and seizure

PACE Part II & Code B

3.7 When a person has been arrested, PACE provides a constable with powers to enter and search premises in pursuit of evidence relevant to the offences. That power is exercised at the discretion of a constable. In situations where arrest is not possible and entry is required, a constable will make application to the court for a warrant.

3.8 Provisions in the Serious Organised Crime and Police Act 2005 amended PACE to enable the court to issue multiple entry or all premises warrants. The aim was to reduce the bureaucracy faced by the police and the courts in applications for and consideration of multiple individual applications for warrants. It also focused on reducing operational delay during the investigative process when entry to premises was required to protect and secure evidence.

3.9 We are keen to explore ways in which we can further rationalise the process of warrant application and execution from both a police and court perspective. We are also keen that any proposals in this area help raise the level of accountability and maintain protections for the individual.

3.10 We are also keen to consider the scope for the provisions of the Criminal Procedure and Investigations Act 1996 requiring all reasonable lines of inquiry to be pursued to be applied to search powers under PACE; and to examine whether the special provisions to access under sections 9 – 14 of PACE require updating to meet 21st challenges in tackling crime.

At the police station

PACE Part IV & Code C

3.11 PACE quite rightly makes the police station a place in which significant safeguards and rights must be made available to the detained person. Ensuring the detainee has access to these rights is important for the protection of the individual but, equally, it also provides a high degree of integrity and evidential status in respect of the investigative and interviewing processes.

3.12 But, as the Minister indicates in his Foreword, it is the procedural formalities which we need to examine. We know that computerised custody records and other electronic processes

help raise the levels and quality of reporting, monitoring and accountability. We need to examine whether there are elements around detention and the custodial process which hinder or present barriers to achieving successful outcomes to investigations.

3.13 Recording what happens to a person at the police station enables effective monitoring and accountability. But there may be scope to look at existing processes. Particularly welcome are suggestions which help reduce bureaucracy and enable arresting officers in particular to spend less time at the police station.

3.14 The PACE 'detention clock' and the review process have been subject to relatively little change since its introduction in the 1984 Act. There has been some change around superintendent's authorisation and remote reviewing of detention. We are keen to examine if there are ways in which we can effect further change which results in reducing the burden on officer time, improving recording of reviews and, importantly, which can result in the detained person spending less time in police detention.

3.15 The person's period in detention can result in him or her being seen by several representatives – solicitor, healthcare professional, interpreter, appropriate adult and independent custody visitor. Whilst it is unlikely that every detainee will experience the full range, access to and waiting time for their attendance can have an impact on the handling of the investigation and the level of officer and staff time. It can also have a more serious impact on the nature and mood of the detained person. Suggestions are welcome from all stakeholders around more integrated working and ability to better plan investigations in consultation with each of the agencies and collectively.

3.16 Healthcare provision – both mental and physical – is an area of growing interest and attention for the police service. The professional intervention of a healthcare professional and at what stage can be a crucial factor affecting the welfare of the detainee and the interests of the criminal justice system. We are working with health and other stakeholders to identify how best professional healthcare can be delivered for those who come into police contact. However, as part of this Review, we would like to examine the existing PACE provisions. In particular, whether the current legislative arrangements are best suited to enabling custody officers to make decisions based on the best information; whether healthcare professionals are able to intervene at the most appropriate stages at the police station; and any competing demands between the investigative processes and the care and welfare of the detainee.

Bail (Street Bail and Police Bail)

3.17 The presumption at the police station is for bail to be granted. From a policing perspective, bail is a key part of planning the investigation and making best use of the detention time allowed under PACE and best use of officer time. It also enables best use to be made of custody accommodation.

3.18 Street bail (bail elsewhere than at a police station) was introduced under the Criminal Justice Act 2003. Again, the key focus of its introduction was to enable officers to better plan their investigation, to spend more time on operational activity on the streets and to place less pressure on the use of the custody suite.

3.19 We know that street bail has limited take up by forces. We also know that where it is in place that it is working and is effective. But we would welcome views on how we can encourage more officers to make use of street bail. As with a fair proportion of street activity, concern lies around identification of the person; being satisfied that they will turn up at the requested place; confident that they will not commit further crime or return to the scene of the offence or the vicinity of victims or witnesses.

3.20 Possible options may revolve around being able to take biometric information at the scene and the ability to raise confidence in the use of street bail . We would welcome views on the benefits of these and other approaches and views of what safeguards should be in place and, in the event of a breach, what action should be possible.

3.21 Bail at the police station already has much of these elements in place. However, it is an area which may benefit from clarification. There are also concerns around the power to enter premises to enforce bail, how to deal with an anticipated breach of bail and detention clock issues around failure to answer bail at a specified police station.

3.22 There is the ability to provide consistency on how we approach street and 'station' bail and we are looking for proposals on how best this can be achieved.

Use of non-designated police stations/ other accommodation

3.23 PACE places considerable emphasis on the use of designated police stations for the detention and questioning of persons suspected of involvement in an offence. Non-designated police stations are not required to have appointed custody officers to oversee the person's detention. The functions of the custody officer at these stations must be performed by an officer (of any rank) who is not involved in the investigation, but if no such officer is available, the role may be carried out by the arresting officer on the condition that he/she informs an inspector at a designated police station of the situation as soon as practicable.

3.24 Section 45A of PACE was introduced to utilise technology and raise oversight by a custody officer at non-designated police stations by enabling a custody officer in a designated police station to use video-conferencing facilities to carry out the functions in relation to a person detained at a non-designated police station.

3.25 Section 45A remains subject to enabling regulations. We are aware of the advances in technology which help promote the case to commence these provisions. The option provides distinct benefits for minimising risks associated with the transportation of suspects, the needs of the investigation and the ability for front-line officers to remain in their operational area rather than travelling substantial distances to the nearest designated police station.

3.26 We would welcome as part of this consultation that respondees help identify the criteria that should accompany potential roll-out of this provision. We would also welcome views on the appropriateness of rolling out this provision.

Short Term Holding Facility

3.27 The vast majority of people arrested spend less than 24 hours in police detention. In fact, the average time spent is normally between 2–4 hours. Part of the necessity criteria for arrest under section 24 of PACE is that a person fails or refuses to give a satisfactory name or address.

3.28 The absence on the street of giving identity or providing satisfactory evidence of identity often means that people are taken to the police station, go through the custody process and take up both accommodation and officer and staff time to be charged or issued with a penalty notice when their identity is confirmed. Importantly, it takes police officers off the street and away from front-line duties.

3.29 The problem is particularly acute in busy urban areas. The volume of suspected offenders means that the efficiency of custody throughput is severely impacted, often with people suspected of low level but still important offences such as shoplifting. A potential solution in dealing with high volume offending is to enable the police to make use of short term holding facilities (STHF) located in shopping centres or town centres. The STHF would be under the supervision of a custody officer and would consist of a number of secure holding areas

within the accommodation. These would provide secure accommodation but would not equate to the standard cell design.

3.30 The function of the STHF would be to confirm the identity of the suspect and process the person by reporting for summons/charging by post, a penalty notice or other disposal. Persons detained would be subject to detention up to a maximum period of 4 hours to enable fingerprinting, photographing and DNA sampling. The STHF would not be used in cases where the arresting officer considers that an investigation was required and authority to transfer a person from a STHF to a designated police station would require the authority of an Inspector. The aim would be to locate STHFs in busy areas to allow quick access and processing of suspects to enable the officer to resume operational duties as quickly as possible.

Biometric information and identification procedures

3.31 A range of powers and procedures are available to enable the police to identify suspects for the purposes of investigating, detecting and preventing crime. These fall into two groups: first, taking, comparing and retaining fingerprints, DNA, footwear impressions and photographs; and second, identification by witnesses.

Biometric

3.32 Fingerprints, samples, footwear impressions and photographs (images) of an individual are used to confirm or disprove an individual's suspected involvement in a criminal offence and to establish identity. The current thresholds for taking and using fingerprints etc. create a number of inconsistencies. For example, fingerprints, samples and footwear impressions of a person arrested, reported, charged, summonsed or convicted for a non-recordable offence cannot be taken without consent to confirm or disprove their involvement in that offence or to create a record in a national searchable database that they have been arrested, reported, charged, summonsed or convicted. Furthermore, a person who refuses to give their true name and address or whose identity is doubted or cannot be verified cannot have these samples etc taken and checked to see if they have previously come to police notice.

3.33 The absence of the ability to take fingerprints etc in relation to all offences may be considered to undermine the value and purpose of having the ability to confirm or disprove identification and, importantly, to make checks on a searchable database aimed at detecting existing and future offending and protecting the public. There have been notable successes particularly through the use of the DNA database in bringing offenders to justice.

3.34 Is there scope to populate identification databases and remove unnecessary operational constraints on the extent to which police are able to use fingerprints etc. to prevent, detect and investigate crime?

3.35 There are benefits in simplifying the powers in terms of the potential for increased detections, removing arbitrary and bureaucratic processes and sending out a strong preventative message to offenders that, whatever level of offending they are involved in, they will be subject to identification processes that can and will be used for searching of the database in relation to other offences. An additional benefit should arise in reducing the number of people taken into police custody and the time that people spend in custody by raising the officer's confidence at the point of contact on the street in being able to verify the suspect's identification.

3.36 Removing the existing thresholds to achieve the potential benefits outlined above must be considered in the context of current capacity to gather identification information and accommodate these on databases. But technological developments are moving rapidly which should enable more effective and efficient

methods of gathering, retaining and making use of identification material.

3.37 Importantly, there are issues around proportionality and whether there are sufficient safeguards to protect a person guilty of a so-called minor offence from being considered as part of an investigation into a more serious offence as a result of the outcome of speculative searches. There will be concerns that providing a uniform set of powers is disproportionate and an excessive approach to dealing particularly with low level offending.

3.38 We very much welcome debate on the content of this section and the proportionate development and use of criminal records and how best we meet the needs of victims and witnesses; safeguard the interests of the individual; and contribute effectively to crime reduction and crime prevention.

Identification procedures

3.39 Currently, PACE Code D stipulates that the suspect must be given a reasonable opportunity to have a solicitor or friend present at the time and place a victim or witness is asked to make a video identification. This is known to have an adverse affect on the ability of some victims or witnesses to make a fair and accurate identification. It also places an additional burden on the police and demands on legal advisers which, if the viewing by the victim or witness is itself videoed, adds little to the safeguards.

3.40 For the identification officer, it creates particular problems when a victim or witness is unable to travel and the officer considers it appropriate to arrange the viewing at the person's home. Therefore we want to look at ways in which we are able to remove or minimise any sense of fear or intimidation and encourage victims and witnesses to confidently participate in identification procedures.

3.41 We also want to examine how technology can be used to protect the identity of victims and witnesses and how best to use places other than the police station to carry out identification procedures. In all of this, we must ensure that sufficient safeguards are in place which make sure that any new processes are subject to appropriate scrutiny and accountability. More widely, current identification procedures and processes are exclusively contained in PACE Code D. Is there a need to consider provision in primary legislation?

Community support and scrutiny at the police station

3.42 Appropriate Adults (AA) and Independent Custody Visitors (ICV) each have differing statutory roles to fulfil at the police station. However, the common factor is that it is representatives from the community who undertake these tasks, usually on a voluntary basis (although there are some paid-for appropriate adults).

3.43 Both groups provide important independent scrutiny of what happens to detainees whilst in police custody. They are recruited from the local community in which they live and the police station is based. That provides crucial community oversight and engagement.

3.44 The work of ICVs and AAs is supported by two national organisations which receive core Home Office funding. Last year, the Home Office commissioned a Review of the National Appropriate Adult Network (NAAN); and the Home Office and the Association of Police Authorities jointly commissioned a Review of the Independent Custody Visitors Association (ICVA).

3.45 There is scope from these reports and from initial discussions with ICVA and NAAN to consider ways in which focusing on the needs of the volunteer (and paid-for appropriate adult) in terms of recruitment and retention, training and reporting mechanisms could help raise

recognition of their contribution. This could include the development and maintenance of a regional or national approach for ICVs and AAs.

3.46 We would also like to receive comments on the impact of ICVs and AAs on the investigative process; suggestions on how we raise their input; and improve the quality of contact with detained persons.

Questioning after charge

Questioning after the decision to refer to the prosecutor for a charging decision

3.47 The threshold for the investigating officer and the custody officer to refer a case to the prosecutor for a decision on charging is at the threshold of there being a realistic prospect of conviction. A detainee must not be interviewed about an offence after they have been charged with, or informed that they may be prosecuted for it, unless:

- the interview is necessary to prevent or minimise harm or loss to a person or the public;
- to clear up an ambiguity in a previous statement or answer; or
- in the interests of justice for information to be put to them which has come to light about the offence since they were charged or informed they might be prosecuted.

3.48 The investigating officer and custody officer continue to adopt the threshold of realistic prospect of conviction in determining when to charge or to refer the case to the prosecutor for a decision on charging. However, with the statutory charging process and the consideration by the prosecutor, there may be issues arising from the investigation stage of the process which requires further examination or clarity.

3.49 The Director of Public Prosecution's guidance makes provision for charging where the evidence passes the Threshold Test; i.e. where there is at least reasonable suspicion that the offender has committed the offence and further evidence is being obtained within a reasonable time that will enable the case to pass the full code test. When that fresh or additional evidence is available, it may be very important that the offender is interviewed about it to see whether he has an explanation or any comments to make. This may affect the selection of the final or additional charges if the offending is more widespread than thought or the interest of justice requires additional charges.

3.50 It is important that all the relevant evidence is available for consideration at the earliest possible stage. That not only assists in ensuring that the decision whether or not to charge is based on all the circumstances but helps minimise the potential for cases to proceed to prosecution when further relevant information may not become known until the court.

3.51 Therefore, we would like views on the questioning of the detainee/suspect from the decision to refer the case to the prosecutor for a charging decision up to the decision by the prosecutor to charge; and from following the decision to charge up to the trial hearing.

3.52 It is acknowledged that the Royal Commission on Criminal Procedure (Runciman, 1994) recommended that the caution to be given in relation to questioning after charge or when a detainee is informed that they may be prosecuted should be limited. The caution in these circumstances is set out in PACE Code C, paragraph 16.5 (a). It reads:

> *"You do not have to say anything, but anything you do say may be given in evidence."*

3.53 We would anticipate that questioning after charge would take place in a police station and the person would remain entitled to the full range of safeguards under PACE. In those circumstances, we would welcome views on the

appropriateness of the person being subject to the full caution under PACE Code C (paragraph 10.5(b)) which states:

> *"You do not have to say any anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."*

3.54 Additionally, the person would be subject to the special warning procedure and required to account for any items in their possession. This would result in the ability of the court to take into account any silences or no comment in response to those questions.

Framework of powers for all enforcement agencies

3.55 PACE clearly has focus on the provision of powers for police officers. Section 67(9) of the Act requires that any person other than a police officer who is charged with the duty of investigating offences or charging offenders must have regard to any relevant provisions of the PACE Codes.

3.56 However, since the Act was introduced, we have a range of new powers for police and for other agencies, and a range of new or different agencies. The police themselves work differently with the use of Police Community Support Officers and civilian detention, escort and investigative staff.

3.57 The status of agencies or civilian staff and the range of their powers are regulated by individual statute or statutes. Codification of all enforcement and investigative powers for all agencies into a single piece of legislation would be a significant task. However, it would provide a single source for identification of what those powers are and establish criteria applicable for each agency across the full range of the powers which applied to them. Additionally, there would be greater clarity and understanding for the public on what they could expect and what safeguards and protections applied to them.

3.58 The Review will look to consider whether such codification is an effective way forward and use the findings to establish whether the powers and procedures in place across the range of agencies are proportionate, suitable and relevant to 21st century needs. Providing a consistent and understandable framework of investigative and enforcement powers would provide both consistency of approach and recognition of the specific role and responsibilities of individual agencies.

Annex A

Response template

PACE Review 2007

Reference (HO use only): / /

Name: Tel:

Position: E-mail:

Organisation (where applicable):

Address:

Confidentiality – If you wish for your response to be kept confidential please tick the following box ☐

Strategic Focus – The aim of the PACE Review process is to improve police efficiency and effectiveness by:

- Reducing bureaucracy
- Removing duplication and replication
- Identifying workforce modernisation opportunities
- Freeing up officers time for operational activity on the street
- Improving communication and raising community confidence
- Promoting areas of strategic change for the police and the way in which the police interact with the Criminal Justice System

Area for change:

☐ Police and Criminal Evidence Act (PACE) 1984
Please identify relevant Part/Sections:

☐ PACE Codes of Practice
Please identify relevant PACE Code/s and paragraph/s:

☐ Guidance
Please identify title of guidance and relevant:

☐ Other
Please identify:

Title of Proposal/Issue Raised:
Aim:
Benefits of Change:
Proposed Outcome:
Consequential Impact/Costs/Savings:

Criteria for change *(please tick one or more below which apply):*

Improving police efficiency and effectiveness

- ☐ promoting strategic change for both police and the way in which the police interact with the CJS
- ☐ reducing bureaucracy
- ☐ removing duplication and replication
- ☐ identifying workforce modernisation opportunities
- ☐ freeing up officers time for operational activity on the street
- ☐ improving communication and raising community confidence

Maintaining Safeguards and enhancing accountability

- ☐ raising public understanding and awareness
- ☐ ensuring powers are proportionate
- ☐ encompassing technology to improve recording and monitoring processes
- ☐ raising levels reporting and accountability
- ☐ protecting the balance between the rights of the individual and the needs of the Criminal Justice System

Increasing Usability and Accessibility by:

- ☐ simplifying legislation and guidance
- ☐ providing consistency of approach on procedures and processes
- ☐ customising publications/materials for target groups
- ☐ engaging and empowering stakeholders, practitioners and training providers at development and implementation stages

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set below.

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:
www.cabinet-office.gov.uk/regulation/Consultation

Consultation Coordinator

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation coordinator Christopher Brain by email at: christopher.brain2@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:
Christopher Brain
Consultation Coordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Produced by COI on behalf of the Home Office, March 2007. Ref: 280261
ISBN: 978-1-84726-201-1